

# Renting laws

## Changes you need to know

The *Residential Tenancies Act 2010* commences on 31 January 2011 and delivers important protection for tenants and landlords. Some of the key changes are as follows.

### Holding fees

Holding fees can only be charged once a tenancy application has been approved. If the tenant pulls out after paying a holding fee they will lose the whole fee.

### Improved disclosure

Before a lease is signed, prospective tenants must be told certain things, such as if the landlord has drawn up a contract to sell the property or if a bank or other financial lender has started court action to recover possession of the property.

### Rental bonds

The maximum amount of rental bond that can be charged is 4 weeks rent. This is for all types of properties, including furnished places. Landlords and agents are not allowed to request or receive any payments to increase the amount of bond held.

Landlords now have 10 working days from the date they receive a rental bond to lodge it with Fair Trading. Agents have 10 working days from the end of each month to lodge all the rental bonds they've collected in that month.

### Rent in advance

Tenants can be asked to pay up to 2 weeks rent in advance. Tenants can voluntarily pay more than 2 weeks rent in advance if they want to, but a landlord or agent cannot ask them for more rent.

### Water efficiency

Rented property must be water efficient if tenants of separately metered premises are to pay for water usage.

Landlords who want to continue charging their existing tenants for water have 12 months from the

start of the new laws to install water efficient measures.

Landlords now need to install water efficiency measures to their rented premises before starting a new lease if they want to charge their tenant for water usage.

### Fee-free rent payments

All tenants must be given at least one accessible, fee-free way to pay their rent. For example, paying rent by transferring money into the landlord's bank account. Tenants will be required to pay the landlord's costs if a cheque for rent bounces or if a direct debit payment is dishonoured.

### Faster rent arrears eviction process

When a tenant cannot pay their rent on time, they fall behind and are in 'rent arrears'. Being in rent arrears is a reason for the landlord to evict a tenant.

Landlords who seek to evict a tenant for rent arrears can hand deliver the termination notice to the tenant's mail box, avoiding the need to add 4 days to the notice period for postage.

An application to the Tribunal for a termination order due to rent arrears can be made at the same time as the termination notice is given to the tenant, cutting up to 2 weeks off the time it takes to get an application heard.

### Additional grounds for eviction

Landlords can seek to end a tenancy if the tenant uses the property for an illegal purpose or if they threaten, abuse, intimidate or harass the landlord or agent.

### Property alterations

If a tenant wants to make a minor alteration to the property, such as installing child safety locks on windows, they need the landlord's written approval first. Landlords need to be reasonable when considering requests, but can say no if the tenant

wants to paint the property, make structural changes or do something that would be difficult to remove.

## Letterbox service of notices

All notices can be hand delivered to a letterbox. This avoids the need to add 4 days to the notice period for postage.

## Tenants get more time to move out

When the tenant's fixed term lease has already ended and the landlord or agent wants the tenant to move out, the tenant must be given at least 90 days notice. Under the old laws, this notice period was 60 days.

If a landlord wants their tenant to move out when the fixed term of the lease ends, they must give the tenant at least 30 days notice. Under the old laws, this notice period was 14 days.

## Optional lease 'break fee'

Landlords have the option of including a fixed penalty in the lease (a break fee) at the start of a new tenancy, in the event that a tenant breaks a lease before the end of the fixed term period. Where there is no such penalty in the lease, the tenant will still be liable to compensate the landlord for any loss.

## Breaking a lease early

Tenants can end a fixed-term lease in certain situations, such as when they accept an offer of public housing or need to move to a nursing home.

## Ways to save tenancies

Tenants who fall behind with their rent can continue their tenancy if their rent arrears are paid or if they follow a repayment plan agreed with the landlord. However, this will not apply if the tenant is shown to have frequently failed to pay their rent on time.

## Sale of rented property

If a rented property is put up for sale, the selling agent must try to come to an agreement with the tenant about what days and times the property will be open for inspection.

Two inspection periods each week are allowed, such as one evening and on Saturday, and the parties can negotiate if more access is required.

## Certainty for landlords

If a landlord wants a tenant to move out after the end of a fixed term lease, the landlord or agent would generally give the tenant a termination notice asking them to move out by a certain date. If the tenant does not vacate the premises the landlord or agent can apply to the Tribunal for an order to terminate the tenancy.

Provided the landlord or agent served a proper termination notice, the Tribunal must order the tenant to vacate the property and return possession of the property to the landlord.

The only exception to this is if the tenant can show that the notice to vacate was retaliatory.

## Sub-letting the property

If a tenant wants to sub-let part of the property or bring in an extra co-tenant, they must obtain the landlord's written permission first. Landlords must be reasonable and consider any requests they receive, but they can refuse to give permission if they have a good reason, such as if the person looking to move in is listed on a tenancy database, or if an extra person living in the property would result in overcrowding.

## Rights of co-tenants

Some disputes between co-tenants in shared households can be taken to the Tribunal. Once a fixed-term lease ends, a co-tenant can give 21 days notice to end their contract with the landlord. This will bring an end to their joint legal liability for future rent, damage etc.

## Domestic violence

Victims of domestic violence living in a rented property have the right to change the locks and seek to take over the tenancy, even if their name is not on the lease.

## New process for goods left behind

There are new streamlined procedures for landlords and agents dealing with goods left behind in a vacated property. Rubbish and perishable items can be disposed of immediately.

## What does this mean for existing tenancies?

The new laws apply to all tenancies, including existing ones, from the date the laws commenced.

If you are a tenant or landlord under an existing residential lease, you do not need to do anything to be covered by the new laws. There is no need to enter into a new lease agreement.

The new laws do not undo any actions that were taken under the old laws. For example, if you paid 6 weeks bond on a property the new law does not allow you to get a refund for 2 weeks bond. However, if there are any terms in an existing lease that conflict with the new laws, then the new laws will apply.

## What does this mean for new tenancies?

All tenancies that begin on or after the date the new laws commenced will be covered by the new laws.

For example, if you are a prospective tenant looking for a property to rent, remember the new laws have now commenced, so you must not pay for your lease agreement and must only pay a maximum of 4 weeks bond, even if the property is fully furnished.

For example, if you are a landlord and you want to rent your property out, remember the new laws have commenced, so you will need to make sure you let prospective tenants know certain things before they sign the lease.

If you are a prospective residential tenant or landlord, any new lease you enter into will be covered by the new laws.

## Background to these reforms

NSW tenancy laws have remained largely unchanged since they were first introduced more than 20 years ago. Commencing in 2005, the Government began a comprehensive review of the existing tenancy laws and during three rounds of public consultation, more than 2000 submissions were received from tenants, landlords, agents, and key interest groups. These ideas and opinions helped shape the Act.

## Keep up-to-date

For updates on the new tenancy laws, including regular bulletins containing case studies and more information to help you understand the new laws, subscribe to the free *Tenancy Update* email service on the Fair Trading website - available in English only.

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